

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

GUY JONES,	§	
	§	
Plaintiff/Counter Defendant,	§	
	§	
VS.	§	CIVIL ACTION NO. H-13-2414
	§	
THE BANK OF NEW YORK MELLON	§	
F/K/A THE BANK OF NEW YORK, AS	§	
TRUSTEE FOR CERTIFICATEHOLDERS	§	
OF CWABS, INC.,	§	
	§	
Defendant/Counter Plaintiff,	§	

OPINION AND ORDER

Pending before the Court in the above referenced cause are (1) a motion for summary judgment on the counterclaim for judicial foreclosure (instrument #36) filed by Defendant/Counter-Plaintiff The Bank of New York Mellon ("BONY"), f/k/a The Bank of New York, as Trustee for Certificateholders of CWABS, Inc., Asset Backed Certificates, Series 2003-BC5, and (2) United States Magistrate Judge Frances Stacy's memorandum and recommendation that it be granted and an order be issued authorizing the judicial foreclosure of Plaintiff/Counter Defendant Guy Jones' ("Jones'") property at 7025 East Alpine Drive, Houston, Texas 77061 (#45).

**Standard of Review**

Summary judgment under Federal Rule of Civil Procedure 56(c) is appropriate when, viewing the evidence in the light most favorable to the nonmovant, the court determines that "the

pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

Dispositive motions may be referred to a Magistrate Judge for a memorandum and recommendation under 28 U.S.C. section (b)(1)(B) and Fed. R. Civ. P. 72(b). Objections to the memorandum and recommendation must be timely filed within fourteen days of entry of the Magistrate Judge's determination and must specifically identify the findings or recommendations for which the objecting party seeks reconsideration. *Byars v. Stephens*, No. 5:13-CV-189-DAE, 2014 WL 1668488, at \*2 (Apr. 14, 2014), *citing Thomas v. Arn*, 474 U.S. 140, 151 (1985). The court does not have to consider "[frivolous, conclusive, or general objections.]" *Id.*, *citing Battle v. U.S. Parole Comm'n*, 834 F.2d 419, 421 (5<sup>th</sup> Cir. 1987). Findings by the Magistrate Judge to which the party specifically objects must be reviewed *de novo* under 28 U.S.C. § 636(b)(1)(c). Findings of the United States Magistrate Judge to which no specific objections are made require the Court only to decide whether the memorandum and recommendation is clearly erroneous or contrary to law. *Id.*, *citing U.S. v. Wilson*, 864 F.2d 1219, 1221 (5<sup>th</sup> Cir. 1989). To meet this very deferential standard, the reviewing court must affirm the magistrate judge's decision unless based "on the entire evidence [the court] is left with a definite and firm

conviction that a mistake has been committed.'" *Baylor Health Care Sys. v. Equitable Plan Sers., Inc.*, 955 F. Supp. 2d 678, 689 (N.D. Tex. 2013), quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). The district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)©; Fed. R. Civ. P. 72(b)(3). Failure to file timely objections bars a party from attacking factual findings on appeal, and, absent plain error, from attacking conclusions of law on appeal. *Scott v. J.P. Morgan Chase Bank, N.A.*, 2014 WL 4167980, \*1 (S.D. Tex. Aug. 19, 2014), citing *Douglass v. United States Auto. Assoc.*, 79 F.3d 1415, 1429 (5<sup>th</sup> Cir. 1996), superseded by statute on other grounds, 28 U.S.C. section 636(b)(1)(extending time to file objections from 10 to 14 days).

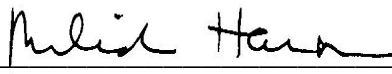
No objections to the Magistrate Judge's memorandum and recommendation have been filed here.

#### **Court's Decision**

The Court has carefully reviewed BONY's Counterclaim (#17-1, Ex. A), BONY's amended motion for summary judgment (#36), Jones' first amended response (#42), BONY's reply (#44), and the Magistrate Judge's Memorandum and recommendation (#45). Because the Court fully agrees with the factual findings and the law applied to them in Magistrate Judge's memorandum and recommendation, to which Jones has not filed any objections, the Court

ADOPTS the memorandum and recommendation as its own and  
ORDERS the BONY's amended motion for summary judgment on its  
counterclaim is GRANTED. Final Judgment will be entered by  
separate instrument.

**SIGNED** at Houston, Texas, this 29<sup>th</sup> day of September, 2015.

  
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MELINDA HARMON  
UNITED STATES DISTRICT JUDGE